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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Cleopatria Martinez,

10 Plaintiff,

11 v.

12 Maricopa County Community College
13 District, a political subdivision of the state,
14 and Rufus Glasper and Debra Glasper,
husband and wife,

15 Defendants.
16

No. CV-15-01759-PHX-NVW

ORDER

17 Before the Court are competing motions for summary judgment. (Doc. 69, 71.)
18 For the reasons below, the Court will grant Defendants' motion and deny Plaintiff's.

19 **I. SUMMARY JUDGMENT STANDARD**

20 A motion for summary judgment tests whether the opposing party has sufficient
21 evidence to merit a trial. Summary judgment should be granted if the evidence reveals no
22 genuine dispute about any material fact and the moving party is entitled to judgment as a
23 matter of law. Fed. R. Civ. P. 56(a). A material fact is one that might affect the outcome
24 of the suit under the governing law, and a factual dispute is genuine "if the evidence is
25 such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v.*
26 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
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1 It is the moving party's burden to show there are no genuine disputes of material fact.
2 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Upon such a showing, however, the
3 burden shifts to the non-moving party, who must then "set forth specific facts showing that
4 there is a genuine issue for trial" without simply resting on the pleadings. *Anderson*, 477
5 U.S. at 256. To carry this burden, the nonmoving party must do more than simply show
6 there is "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v.*
7 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Where the record, taken as a whole, could
8 not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for
9 trial. *Id.* at 587. "A court must view the evidence 'in the light most favorable to the [non-
10 moving] party.'" *Tolan v. Cotton*, — U.S. —, 134 S. Ct. 1861, 1866 (2014) (quoting
11 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). "A 'judge's function' at summary
12 judgment is not 'to weigh the evidence and determine the truth of the matter but to determine
13 whether there is a genuine issue for trial.'" *Id.* (quoting *Anderson*, 477 U.S. at 249).

14 **II. FACTUAL BACKGROUND**

15 **A. Summary of Facts and Claims**

16 Plaintiff Cleopatria Martinez ("Martinez") is a math instructor at Phoenix College,
17 a school within the Maricopa County Community College District ("District"). She has
18 over 30 years of service at the District and had reached "appointive" status, giving her a
19 right to continuous employment. (Doc. 78 at ¶ 1, 14.)

20 High-level administrative officials brought termination proceedings against
21 Martinez. Following the District's termination procedure, a Hearing Committee found, in
22 part, that Martinez had committed insubordination by refusing a direct command to
23 refund money to students whom she had charged for course materials. Nevertheless, the
24 Hearing Committee recommended against termination in light of her 30 years' service.
25 Chancellor Rufus Glasper ("Glasper") accepted the Hearing Committee's finding of
26 misconduct and did not pursue termination any further, which would have required action
27 by the Governing Board. He then commenced proceedings for the lesser sanction of
28 suspension, which he imposed. Those proceedings did not require Board approval.

1 Martinez brought this 42 U.S.C. § 1983 damage action against the District and
2 Glasper personally¹ for violation of due process of law in depriving her of property and
3 liberty. (Doc. 14 at ¶¶ 93-109.) She has since conceded that there was no due process
4 violation for deprivation of liberty. (Doc. 71 at 13.) She also seeks declaratory relief.
5 (Doc. 14 at ¶¶ 110-17.) Both sides have moved for summary judgment on facts that are
6 materially undisputed.

7 Martinez's exact claim is elusive. Her cause of action is 42 U.S.C § 1983. She
8 attempts to plead only a claim for deprivation of property (her employment) without the
9 federal constitutional minimums of fair and adequate procedure required by due process
10 of law in the circumstances. It may seem strange and even bizarre that the District's rich
11 and elaborate procedures for dismissal and suspension would nevertheless fall short of
12 federal constitutional minimums of fairness. Indeed, the claim is bizarre. Martinez has
13 raised no colorable federal claim of deprivation of property without due process of law.

14 At oral argument on October 30, 2017, Martinez conceded that she pleaded no
15 state law cause of action. Nevertheless, her briefing argues that her one-year suspension
16 was not authorized under the District procedures for suspension, which do not require
17 Governing Board approval. Her one-year suspension, Martinez contends, could have
18 been done only under the District procedures for termination, which *do* require
19 Governing Board approval. She says the one-year suspension was the "economic
20 equivalent" of termination and therefore available only under the procedures for
21 termination. Thus, she contends, Glasper could suspend her only by disputing the
22 Hearing Committee's recommendation that she not be terminated and recommending that
23 she be suspended by the Governing Board in the termination proceedings. Whatever its
24 merit, that is a contention of the meaning of state law.

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26 ¹ Defendants pleaded a qualified immunity defense. (Doc. 15 at 20, ¶ 2.)
27 Martinez never challenged the qualified immunity defense in her motion for summary
28 judgment. Glasper did not move for summary judgment on that defense either. The
Court decides in favor of Defendant Glasper on the merits and does not reach the
qualified immunity defense.

1 Even apart from Martinez's disavowal of any state law cause of action, if she did
2 plead a state law claim, it too would be patently incorrect. The District fully complied
3 with the District's procedures. District policies themselves sensibly distinguish between
4 dismissal and suspension and outline different procedures and authority for each.
5 Martinez received the benefit of both sets of procedures, though her actual discipline was
6 suspension only. A one-year suspension is still a suspension. Indeed, the suspension
7 expired 13 months later, and Martinez returned to work the next Fall semester. To say
8 she was terminated though she returned to work proves only that paper will bear any
9 words written upon it. There is no colorable state law claim here even if Martinez did
10 attempt to plead such a claim.

11 **B. Martinez's Transgressions**

12 Martinez did not require her students to purchase textbooks. Instead, she prepared
13 her own materials, which she called lecture notes, to distribute to the students. (Doc. 73
14 at ¶ 7.) As part of these lecture notes, she would copy problems and diagrams from
15 copyrighted sources. (*Id.* at ¶ 8.) She did not cite the sources when so copying. (*Id.*)
16 Martinez believed that the education exception of the fair use doctrine protected her use
17 of copyrighted materials. (Doc. 80 at 3, ¶ 9).

18 When district officials learned of this behavior, they disapproved. The District's
19 Vice President of Academic Services emailed Martinez on January 12, 2010. He flagged
20 the potential copyright problems with materials she had printed for the Fall 2009 and
21 Spring 2010 semesters. He sent another email on January 26, 2010, and two days later,
22 the District's in-house counsel talked with Martinez by phone. An in-person meeting
23 with other administrators followed, as did a copyright training session with a librarian.
24 (Doc. 73 at ¶ 10.)

25 The administration restricted Martinez's ability to use the college's copy center,
26 requiring her to submit her requests to the department chair so he could screen the
27 materials. (Doc. 73 at ¶ 11.) Martinez did not abide by this policy, printing materials
28 without departmental approval. (*Id.* at ¶ 12.) This deprived the administration of its

1 independent confirmation that she was not continuing to use copyrighted material.
2 Outside counsel informed the District that, in his opinion, Martinez’s Fall 2010 lecture
3 notes violated copyright law. (*Id.* at ¶ 13.) He said these violations could prove very
4 costly—up to \$150,000 each. (*Id.*) Consequently, on December 9, 2010, the
5 administration further restricted Martinez’s printing and copying privileges. She was
6 now unable to use materials that she created and had to use only math-department-
7 approved materials or those available for sale at the bookstore. (*Id.* at ¶ 14.)

8 Many months later, in August of 2012, Martinez photocopied materials at a local
9 Staples store. (*Id.* at ¶ 15.) She used the materials as an alternative to a textbook. (*Id.*)
10 She either “sold” the packets to the students for \$11 (*id.*) or asked to be reimbursed for
11 her expenses if the students did not copy the packets themselves (Doc. 80 at 5, ¶ 15).

12 On October 18, 2012, the President of Phoenix College required Martinez to
13 reimburse, via personal check, any affected student. (Doc. 73 at ¶ 17.) The President
14 found that Martinez had violated District policy, particularly Administrative Regulation
15 1.12, by transacting directly with students. (Doc. 73-2, Ex. 21.) Administrative
16 Regulation 1.12 requires the Governing Board to approve changes to the budget and fees
17 collected, which it had not done with respect to the money Martinez collected when she
18 transacted directly with students. (*See id.* (“[Y]ou imposed charges on the students
19 without authority to do so.”).) In the October 18 directive, the President reaffirmed her
20 earlier restrictions on Martinez’s copying privileges. (*Id.*) Citing Administrative
21 Regulation 6.7, she also warned Martinez that further insubordination could subject her to
22 harsher punishment, “up to and including termination.” (*Id.*)

23 Around January 9-11, 2013, the District learned that several students had not
24 received their reimbursement checks. (Doc. 73 at ¶ 17; Doc. 72 at ¶ 7.) The District
25 required Martinez to produce copies of all refund checks by January 18, 2013. (Doc. 73
26 at ¶ 17.) As of her dismissal hearing in November 2013, she still had not done so. (Doc.
27 73-4, Ex. 23 at 232:17-25.)
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1 **C. The Dismissal Hearing**

2 The road to that dismissal hearing began with a “Pre-Disciplinary Conference” on
3 April 3, 2013. (Doc. 73 at ¶ 19.) The stated purpose of the conference was “to ensure
4 that the decision to be made concerning the complaints against” Martinez would be
5 “based on complete and accurate information.” (Doc. 73-5, Ex. 26.) Phoenix College’s
6 President and Vice President of Academic Affairs conducted the meeting. Also present
7 were two Human Resources staff members. Martinez was entitled to have a fellow
8 employee there as a representative, but only to observe and not to participate. (*Id.*)

9 After the April 3, 2013 meeting, the President and Vice President decided to
10 terminate Martinez’s employment. (Doc. 73 at ¶ 20.) On August 9, 2013, the District
11 provided Martinez with a Statement of Charges regarding termination proceedings. (*Id.*)
12 The charges included violating copyright law and the District’s cash handling policy—
13 although pointing to Administrative Regulation 1.17 rather than Regulation 1.12. (Doc.
14 73-5, Ex. 27.) A copy of Regulation 1.17 was attached to the Statement of Charges.
15 Regulation 1.17 requires that there be, among other things, specific safeguards for storing
16 cash, independent reconciliation of receipts, and management oversight of cash handling
17 processes and personnel. (*Id.*) The Statement of Charges also accused Martinez, because
18 of her failure to follow the administration’s commands barring unauthorized copying and
19 requiring her to reimburse her students, of violating Administrative Regulations 6.7.1 and
20 6.7.3, which prohibit willful violations of the law or of District rules. (*Id.*)

21 Martinez exercised her right to a hearing. (Doc. 80 at 6, ¶ 19.) The day-long
22 hearing took place on November 18, 2013. (Doc. 73 at ¶ 22.) The Hearing Committee
23 was composed of three faculty members. (Doc. 73-5, Ex. 24 at 8.) The procedures were
24 robust and involved a scheduling order, pre- and post-hearing briefing of arguments, a list
25 of witnesses and exhibits, citation to supplemental authority, and more. (Doc. 73 at
26 ¶ 22.) Martinez was represented by counsel, called witnesses, cross-examined the
27 District’s witnesses, and offered evidence. (*Id.*) Among Martinez’s evidence was advice
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1 she received from an intellectual property attorney, who provided a detailed analysis of
2 why Martinez had not violated copyright law. (Doc. 73-5, Ex. 24 at 4, ¶¶ 30-32.)

3 The Hearing Committee made its findings and recommendation on December 9,
4 2013. (Doc. 73-5, Ex. 24 at 8.) It found: (1) the expert testimony conflicted and made it
5 unclear whether Martinez violated copyright law; (2) for reasons the Committee did not
6 clearly explain, whether Martinez violated the District’s “cash handling” rules was also
7 inconclusive; and (3) Martinez “intentionally” failed to comply with the “clear directive”
8 to issue refunds and was therefore willfully insubordinate. (Doc. 73-5, Ex. 24 at 7, ¶¶ 64-
9 67.) This willful insubordination violated two portions of District regulations.
10 Administrative Regulation 6.7.1 prohibits the “[w]illful and intentional violation of any
11 . . . [District] administrative regulation that affects the employee’s ability to perform his
12 or her job.” Administrative Regulation 6.7.3 prohibits the “[w]illful and intentional
13 failure to perform job duties that have first been communicated to an employee and are
14 within the employee’s scope of employment.” (Doc. 73-5, Ex. 24 at 7, ¶¶ 68-69.)
15 Ultimately, the Committee recommended against dismissing Martinez in light of her 30
16 years’ service. (Doc. 73-5, Ex. 24 at 8; Doc. 73 at ¶ 25.) Glasper did not further pursue
17 dismissal, which would have required approval of the Governing Board.

18 **D. The Suspension**

19 Glasper informed Martinez in a February 10, 2014 letter that he would not
20 recommend to the Governing Board that it overturn the Hearing Committee’s
21 recommendation against termination. He also provided a new Statement of Charges
22 seeking suspension and said that he had “decided to suspend [her] employment under
23 [his] sole authority as Chancellor pursuant to section [3.13]² of the Residential Faculty
24 Policies.” (Doc. 73-6, Ex. 36 at 57 of 88.) The suspension was to begin on March 1,
25 2014, and run through May 15, 2015. Glasper said that he had confirmed with the

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27 ² The section numbering changed from 3.13 to 3.11 in the 2013-14 academic year.
28 For simplicity, and because there were no substantive changes, the Court uses “3.13”
throughout this Order. All other Residential Faculty Policy references are also to the
Policies from the 2012-13 academic year.

1 General Counsel, as the Residential Faculty Policies required, that the suspension did not
2 violate Martinez's rights. "The basis for this action is the unanimous finding of an
3 independent hearing committee that you willfully violated the district policies set forth in
4 the statement of charges and that I have the authority to suspend your employment
5 without pay." Glasper also informed Martinez that she could retire voluntarily and
6 remain on paid administrative leave until May 9, 2014. (*Id.*)

7 Martinez had the right to meet with the Vice Chancellor of Human Resources to
8 discuss the Statement of Charges. She canceled the day before their scheduled meeting
9 because of a medical issue. (Doc. 73 at ¶ 27.) The District postponed her suspension by
10 one month to ensure that she could meet with the Vice Chancellor. (*Id.*) On March 7,
11 2014, the two met, with Martinez accompanied by counsel. (*Id.* at ¶ 28.) Martinez's
12 suspension was upheld and ran from April 15, 2014, until May 15, 2015. (*Id.* at ¶ 27.)

13 The Governing Board was not required to approve the suspension or to review it.
14 Martinez could ask the Board, in its discretion, to intervene, and she wrote numerous
15 letters to the Governing Board and appeared before it several times. (Doc. 73 at ¶¶ 30-
16 35.) She argued that her suspension was the economic equivalent of termination.
17 Martinez contends she had no meaningful hearing because she had no right under the
18 Residential Faculty Policies to appear formally before the Board, but she did appear.
19 (Doc. 80 at 12-13, ¶ 23.) The Board took no action to intervene. Again, at oral argument
20 Martinez disavowed any claim for violation of state law.

21 Martinez returned to Phoenix College in the fall of 2015, after her suspension
22 expired. (*Id.* at ¶ 36.) Plainly, she was not terminated. She is still in defiance of the
23 order to reimburse her students for the \$11 course materials. (*Id.* at ¶ 37.)

24 **III. DUE PROCESS OF LAW**

25 **A. Federal Due Process Standards**

26 The federal due process clause does not give a substantive right to property or
27 liberty. It gives, in some circumstances, a federal right to some process before the state
28 takes away property or liberty, or process afterwards. There are two steps to the due

1 process analysis. The first is determining whether the plaintiff has a property interest.
2 *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 570 (1972). If so, the second is
3 determining what process is due. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.
4 532, 541 (1985). The answer varies according to the circumstances of the deprivation.
5 The inquiry considers the procedures and the interest affected, “the risk of erroneous
6 deprivation of such interest” through the challenged procedure, the value of additional
7 procedure, and the government’s interest in the existing procedure. *Mathews v. Eldridge*,
8 424 U.S. 319, 335 (1976). “The fundamental requirement of due process is the
9 opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333
10 (internal quotation marks omitted).

11 As an appointive—i.e., tenured-in-fact—faculty member, Martinez had a property
12 interest in her continued employment at Phoenix College, even as against a temporary
13 suspension. *See Roth*, 408 U.S. at 577 (citing *Connell v. Higginbotham*, 403 U.S. 207,
14 208 (1971)) (recognizing due process rights for teachers even without tenure when there
15 was “a clearly implied promise of continued employment”). “Temporary suspensions,
16 like terminations, are deprivations of employment that can implicate the protections of
17 due process.” *Ass’n for L.A. Deputy Sheriffs v. Cty. of L.A.*, 648 F.3d 986, 991 (9th Cir.
18 2011). The question is what process was due. Martinez had a right not to be suspended
19 without minimally fair procedure under the due process clause.

20 After a thorough termination procedure, the Hearing Committee made a binding
21 finding that Martinez refused to comply with express directions and therefore was
22 insubordinate. That elaborate procedure richly satisfied federal constitutional standards.
23 By equal if not stronger force, Glasper’s reliance on the binding facts found under that
24 procedure was constitutionally adequate to suspend her.

25 **B. The Faculty Policies Concerning Suspension and Termination**

26 Two distinct sections of the Residential Faculty Policies are in play here. Policy
27 3.13 deals with the Chancellor’s power to suspend. (*See* Doc. 72-2 at 59-60 of 117.)
28 Under that Policy, the Chancellor must write a formal statement of charges against the

1 faculty member, as Glasper did. The faculty member must be notified either in person or
2 by registered or certified mail. If the suspension is without pay, the Chancellor must first
3 seek the advice of the General Counsel. Further, the Vice Chancellor of Human
4 Resources must consult with the faculty member regarding the rationale for the
5 suspension. The District did everything the Policy required. The state-law procedure
6 was fully satisfied. Martinez does not plead any claim for violation of Policy 3.13.

7 The provision of the Residential Faculty Policies that deals with termination is
8 more elaborate. (*See* Doc. 72-2 at 60-62 of 117.) Under Policy 3.15, the College
9 President first writes a formal statement of charges and forwards it to the Vice Chancellor
10 of Human Resources. The Vice Chancellor then consults with the District Legal Office
11 and determines whether to inform the Chancellor that a legally sufficient case exists for
12 dismissal. The Chancellor writes to the Governing Board, with a copy sent to the faculty
13 member.

14 The Vice Chancellor's recommendation gives notice to all parties of the intent to
15 formally recommend dismissal. It also includes as an attachment a formal statement of
16 charges that contains, as applicable, the statutes, policies, rules, or written objectives that
17 the faculty member is alleged to have violated. The statement of charges must be specific
18 enough to allow the faculty member to defend herself.

19 Within five business days the faculty member may demand a hearing by writing to
20 the Vice Chancellor. This suspends dismissal. The District then forms a Hearing
21 Committee composed of three faculty members. The Chancellor selects one, the
22 President of the Faculty Association selects another, and the accused faculty member
23 selects the third. The Chancellor's and the Faculty Association President's selections
24 must come from other colleges within the District. Only the accused may select a
25 Committee member from the college where the accused teaches.

26 The Hearing Committee selects a chair. (The parties can stipulate to different
27 timelines at this point.) Within twenty business days, the Chair meets with the
28 attorneys/representatives of the parties to hold a prehearing conference and exchange

1 exhibits, witness lists, summaries of testimony. If a party does not comply with the
2 prehearing rules, the Chair can exclude any offending evidence.

3 Within ten business days the hearing commences. The faculty member may elect
4 to have the hearing in public or in executive session. “The member may attend the
5 hearing; present any testimony, evidence, or statements, oral or written, in his/her behalf;
6 and be represented by legal counsel or other representative. It is expressly understood the
7 act of testifying will not be subject to reprisal by the [District].” Faculty Policy 3.15.6.
8 Within five business days the Hearing Committee must provide the Chancellor and the
9 faculty member with a summary of evidence and binding written findings of fact and
10 conclusions of law. It must also recommend whether to dismiss the faculty member, but
11 the recommendation is not binding.

12 The Chancellor has an opportunity to meet with the Hearing Committee and
13 clarify any questions about its findings or conclusions. He may then either adopt the
14 Committee’s recommendation regarding dismissal or make his own and forward it, along
15 with the Committee’s findings and recommendation, to the Governing Board.

16 Again, in the earlier proceeding concerning dismissal, the District procedures were
17 fully complied with. Glasper adopted the Committee’s finding that Martinez had violated
18 District regulations and its recommendation against dismissal, despite the violation.

19 **1. Neither Faculty Policy Requires Board Action for Suspension**

20 Though it is not a federal due process claim, Martinez argues that her suspension
21 was the economic equivalent of termination. Because she was effectively terminated, she
22 says, under Policy 3.15 Glasper could not suspend her without recommendation to and
23 approval of the Governing Board. That part of Martinez’s discussion is odd because at
24 oral argument she conceded that she was making no claim of violation of the Faculty
25 Policy.

26 In any event, Martinez misstates the text and the meaning of Policy 3.15.
27 Martinez asserts that Policy 3.15 commands the Chancellor to (1) accept the Hearing
28 Committee’s recommendations or (2) recommend his own course to the Governing

1 Board, which can be “a recommendation for a lesser discipline.” (Doc. 71 at 2.) But the
2 recommendation to the Board is required only if the Chancellor seeks termination despite
3 the Committee’s recommendation not to terminate. To the extent she says the Chancellor
4 is ever required to recommend a lesser discipline or get Board approval for it, Martinez
5 manufactures her assertion out of whole cloth. It has no textual basis and it contradicts
6 the language of the Faculty Policy. Policy 3.15.8 states, “The Chancellor may adopt the
7 Hearing Committee’s recommendation *regarding dismissal* or make his/her own
8 recommendation and forward the recommendation . . . to the Governing Board.”
9 (Emphasis added.) The Policy speaks to recommendations “regarding dismissal.” Here,
10 the Committee recommended against dismissal despite its finding of Martinez’s
11 misconduct. The Chancellor could have nonetheless recommended dismissal to the
12 Board but did not. The Policy does not even hint that the Chancellor must make a
13 recommendation on lesser discipline within the 3.15 dismissal proceeding.

14 Policy 3.13 speaks directly to the Chancellor’s authority to impose discipline less
15 than dismissal, which lies entirely within his authority subject to the procedures stated
16 therein and the Board’s discretion to intervene later and overturn his action. The Board
17 need not review the Chancellor’s imposition of the discipline of suspension. Neither 3.13
18 nor 3.15 require Board action on discipline less than dismissal.

19 Under Martinez’s interpretation, if a faculty member received the full procedural
20 protections of Policy 3.15 for a possible dismissal, the Chancellor would have to go to the
21 Governing Board to suspend her or for any lesser discipline at all. Yet if the Chancellor
22 invoked Policy 3.13 from the start, going to the Governing Board would not be required.
23 This result has no basis in the text, is contrary to the text, and is absurd.

24 In addition to the full process of Policy 3.13 for suspension, Martinez received the
25 surplusage of process that 3.15 affords for the predicate finding of willful
26 insubordination. The Hearing Committee found that Martinez had violated
27 Administrative Regulation 6.7. (Doc. 73-5, Ex. 24 at 7, ¶¶ 68-69.) It further noted that
28 violating Administrative Regulation 6.7 “constitutes grounds for disciplinary action *up to*

1 . . . and including termination.” (*Id.* at 8, ¶ 71.) When deciding to suspend Martinez,
2 Glasper was perfectly within his authority to incorporate the Committee’s binding
3 finding, made under the processes of 3.15, that she had violated Administrative
4 Regulation 6.7.

5 Moreover, Policy 3.15.8 encourages the Chancellor to meet with Committee
6 members after the termination hearing: “After receiving the Hearing Committee’s
7 summary of evidence, findings of fact, conclusions of law, and final recommendation in
8 regard to dismissal, the Chancellor, may meet with the Hearing Committee to clarify any
9 questions he/she may have.” Glasper did just that and testified without contradiction that
10 he spoke privately with the Committee members to find out more about their
11 recommendation. (Doc. 73 at ¶ 25.) The Committee members told him that termination
12 was too harsh but that a different disciplinary action, such as unpaid suspension, would
13 be appropriate. (Doc. 73-6, Ex. 35 at ¶ 7.) (This is not inadmissible hearsay because the
14 statements are the speakers’ own advice/recommendations to Glasper from their own
15 present state of mind. *See* Fed. R. Evid. 803(3).) Martinez does not controvert this
16 evidence. It is immaterial that Glasper did not include it in the suspension letter.

17 **2. Glasper Did Not Include a New Charge in the Suspension Letter**

18 Martinez incorrectly asserts that Glasper’s February 10 letter brought up a new
19 “charge” under Administrative Regulation 1.12, which requires the Governing Board to
20 approve changes to the budget and fees charged. Glasper’s letter said, in the context of
21 going over the facts of the case, “Phoenix College determined that your course materials
22 charge was not included in the adopted budget or pre-approved by the Governing Board.”
23 (Doc. 73-6, Ex. 36.) Glasper was explaining why the District came to believe that
24 Martinez had violated the cash handling policy and how the President had described it in
25 the October 18, 2012 corrective action notice. He was not laying out a new charge
26 against her, nor did he use it as a new basis for suspending her, which he made clear was
27 the Hearing Committee’s finding that Martinez violated Administrative Regulation 6.7.
28 (*See id.* (“[T]his letter will serve as a statement of charges that you are in violation of

1 Administrative Regulation 6.7.1 and Administrative Regulation 6.7.3.”.) For that
2 reason, it is less than honest for Martinez to say she had not previously encountered
3 Administrative Regulation 1.12. (See Doc. 73-2, Ex. 21 at 245 of 266 (October 18, 2012
4 corrective action notice to Martinez) (“This transaction is a violation of . . . [the
5 District’s] cash handling rules as detailed in Administrative Regulation 1.12.”).)

6 In addition, Martinez *was* charged in the termination proceedings with violating
7 Administrative Regulation 1.17, which was another basis for finding that she had
8 improperly transacted with students. Regulation 1.17 requires management oversight of
9 cash handling processes and personnel; Regulation 1.12 requires Governing Board
10 oversight of the budget and of fees charged. Martinez points to no meaningful distinction
11 between the two as applied to her transactions with her students.

12 **3. Martinez Received Ample Process**

13 Because Martinez admittedly raises no state law claims, this action turns solely on
14 whether she received minimally adequate due process. As a matter of federal law, the
15 procedures of Policies 3.13 and 3.15 provided Martinez with abundant due process for
16 termination or suspension.

17 Martinez undoubtedly has a property interest as against suspension of her
18 employment sufficient to require some process before she is deprived of it. But that
19 interest against suspension was not the legal or economic equivalent of dismissal. The
20 rich processes Martinez received, including notice and opportunity to be heard, clearly
21 met federal due process requirements. The facts of her insubordination are undisputed.
22 Martinez says she regrets her action, not that she denies it. The District has an interest in
23 maintaining its existing process. Martinez does not identify any additional procedure she
24 could be due under federal procedural law.

25 The District also has a strong interest in sanctioning insubordinate employees,
26 particularly when it sees a pattern after warnings. Martinez’s insubordination continues
27 to this day. It does not matter how many similar punishments have been necessary in
28 the past or whether this is the first time it has been necessary.

1 Perhaps Martinez also demands an opportunity to argue to the decision-maker that
2 a lesser sanction than suspension would be appropriate for her undisputed
3 insubordination. She had that opportunity and availed herself of it before the Board.

4 **4. Glasper Was Impartial for Due Process Purposes**

5 Though it was not pleaded or otherwise properly before the Court, Martinez also
6 contends in her Motion for Summary Judgment that Glasper unconstitutionally occupied
7 both a partisan and a judicial role in her case. Failure to plead this claim bars it. *See*
8 *Wasco Prods. Inc. v. Southwall Tech, Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) (quoting
9 *Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 24 (1st Cir. 1990)) (“[T]he necessary
10 factual averments are required with respect to each material element of the underlying
11 legal theory. . . . Simply put, summary judgment is not a procedural second chance to
12 flesh out inadequate pleadings.”). Beyond recounting Glasper’s actions, Martinez’s
13 Reply Brief can point only to a blanket assertion in the Complaint that she had a “right to
14 due process free of bias.” (Doc. 88 at 7-8.) That bare conclusion unsupported by any
15 allegation that would make it plausible falls short of federal pleading requirements. *See*
16 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). It was not enough to “put
17 Defendants on notice” (Doc. 88 at 8) of her bias theory.

18 In any event, the bias theory holds no water. It appears Martinez contends that
19 because Glasper (indirectly) initiated the discipline that the Hearing Committee reviewed
20 and found factually correct, Glasper was intrinsically biased in any further action
21 concerning that discipline. That would have disqualified Glasper from recommending
22 further action in the dismissal proceeding too. Martinez argues, “A situation in which an
23 official occupies two practically and seriously inconsistent positions, one partisan and the
24 other judicial, necessarily involves a lack of due process.” (Doc. 71 at 13.) Yet, for the
25 reasons discussed above, there is nothing inconsistent about how Glasper behaved.
26 District policy, embodied in Policies 3.15 and 3.13, allowed Glasper both (1) to accept
27 the Hearing Committee’s recommendation not to fire Martinez and (2) to suspend her
28 based on the same Committee findings. He accepted the Committee’s recommendation

1 on termination and also accepted its finding of misconduct, on which Martinez had
2 received abundantly sufficient process.

3 There is no evidence or even specific allegation of actual bias by Glasper.
4 Similarly, Glasper had no occasion to present evidence of lack of bias. That is not
5 surprising because no such claim was pleaded or subject to discovery. Martinez may not
6 ambush Glasper now on that claim raised first in summary judgment briefing.

7 In the absence of actual evidence of bias, Martinez appears to argue that a
8 personnel supervisor is disqualified from making a supervisory and disciplinary decision
9 whenever he was involved earlier in the personnel matter. It is irrational to say that
10 Glasper's acceptance of the Committee's prior finding of misconduct shows Glasper was
11 biased in imposing lesser sanctions for that very misconduct, which was consistent with
12 the Hearing Committee's recommendation against dismissal.

13 The cases that Martinez cites are inapposite. *Walker v. City of Berkeley*, 952 F.2d
14 182 (9th Cir. 1991), involved a city attorney who was litigating against the employee in
15 federal court and who was the decision-maker in the employee's administrative post-
16 termination hearing. *Id.* at 184. Here, the District's counsel did not decide to suspend
17 Martinez. Glasper did. Counsel was not involved with the Hearing Committee until after
18 its proceedings had ended. Nor is this case like *Ward v. Village of Monroeville, Ohio*,
19 409 U.S. 57 (1972), in which the fines that came in from the mayor's traffic court
20 amounted to almost half of the village's revenue. *Id.* at 58. The Supreme Court
21 explained that this situation diminished the mayor's impartiality and might tempt "the
22 average man as a judge to forget the burden of proof." *Id.* at 59-60 (quoting *Tumey v.*
23 *Ohio*, 273 U.S. 510, 532 (1927)). Martinez's challenge of bias is belated, factually
24 groundless, and legally erroneous.

25 **C. Declaratory Relief**

26 Martinez seeks declaratory relief that would invalidate the copying restrictions the
27 District has placed on her. The Declaratory Judgment Act provides that the federal courts
28 "may declare the rights and other legal relations of any interested party seeking such

1 declaration.” 28 U.S.C. § 2201(a). “Declaratory relief is available at the discretion of the
2 district court.” *Chesebrough-Pond’s, Inc. v. Faberge, Inc.*, 666 F.2d 393, 398 (9th Cir.
3 1982).

4 Granting declaratory relief in this case would be unwise because it would require
5 wading into a matter, whether Martinez violated copyright law, not before the Court.
6 Martinez has no right to push the boundaries of copyright infringement in her employer’s
7 business. The District instructed her not to, as caution allows it to do. It does not matter
8 that the Hearing Committee found that the District “failed to carry its burden of proof
9 regarding Martinez’s . . . alleged violations of U.S. Copyright Law and fair use
10 guidelines.” (Doc. 79 at 4-5.) The Committee so found because the two copyright
11 experts disagreed, and it was “inconclusive” whether Martinez “intentionally and/or
12 inadvertently violated federal copyright law.” (Doc. 72-3 at 109 of 125, ¶ 64.)

13 The Court need not decide whether Martinez actually violated copyright law.
14 What matters is the District had a good-faith basis for adopting a prophylactic order.
15 Martinez was insubordinate in refusing that order to desist or to obtain prior approval of
16 content before copying course materials. The school decided to act cautiously and to
17 institute protocols to avoid potential legal battles. Martinez ignored those protocols when
18 they were implemented. Indeed, at her hearing, Martinez expressed regret for not
19 complying, and she “never claimed that she did not understand the instructions or that the
20 instructions were beyond the scope of [the District’s] authority.” (Doc. 73-5, Ex. 24 at 7,
21 ¶ 67.) Martinez has no right to force the District into a copyright lawsuit. The District is
22 not required to win that lawsuit.

23 It would be an abuse of discretion to adjudicate any copyright matter, and in any
24 event this Court exercises its discretion not to do so. There is not even a case or
25 controversy to support such a declaration.³

26
27 ³ Martinez’s prior litigation appears to have sought adjudication on the declaratory
28 judgment issue and was dismissed with prejudice. *See Martinez v. Maricopa Cty. Comm. Coll. Dist., et al.*, No. 2:12-cv-00702-DGC. *Res judicata* would normally apply, but Defendants did not make anything other than a cursory, blanket claim of *res judicata* in

1 Martinez was fully and richly accorded fair, adequate, impartial procedure in the
2 District's decision to suspend her for her undisputed insubordination and refusal to follow
3 directions. Martinez does not present even a colorable argument of violation of due
4 process of law.


5 IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment
6 (Doc. 69) is granted.

7 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment
8 (Doc. 71) is denied.

9 IT IS FURTHER ORDERED that the clerk enter judgment in favor of Defendants
10 Maricopa County Community College District and Rufus and Debra Glasper against
11 Plaintiff Cleopatria Martinez and that Plaintiff take nothing.

12 The clerk shall terminate this case.

13 Dated this 31st day of October, 2017.

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16 _____
17 Neil V. Wake
18 Senior United States District Judge
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27 their Answer without pointing to a prior case (Doc. 15 at 21, ¶ 4), and they did not
28 develop an argument until their Reply on summary judgment (Doc. 87 at 7-9). The Court
thus does not decide the merits of this defense.